IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 3585 of 1996

BHIYA RAM & ORS
V/S
STATE & ORS

Mr. SS DHILLON for Mr. HSS KHARLIA, for the appellant / petitioner

Mr. RK SINGHAL, Mr. RS GILL, Mr. O.P BOOB, AGA, for the respondent

Date of Order : 11.12.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

By this petition, the petitioners seek to challenge the order of the Superintending Engineer dated 24.9.96, being Annex.7.

The controversy lies in a very narrow compass, inasmuch as, the cultivators of Chak 7 MSR moved application for shifting their irrigation from Chak 7 MSR to Chak 8 MSR, as according to the petitioners, better irrigation facility was available/would be available, if the lands were to be irrigated from Chak 8 MSR. This application was allowed by the Executive Engineer. Against that appeal was filed before the Superintending Engineer, and the Superintending Engineer remanded the matter back to the Executive Engineer vide Annex.4, with a direction, to

hear all the effected cultivators, and to hold complete inquiry, and to pass a fresh order. Thereafter, the Executive Engineer again passed the order, Annex.6, dated 24.8.96, directing that shifting of irrigation from Chak 7 MSR to Chak 8 MSR is correct, and also gave direction to the cultivators of Chak 7 MSR, that they will take all steps to avoid overflow of the water.

Against this order again appeal was filed by the cultivators of Chak 8 MSR, and the Superintending Engineer, vide impugned order, allowed the same, and set aside the order of the Executive Engineer.

A look at the order, Annex.7 shows, that though it runs into 9 long pages, but then, what I find is, that from page 3 to 7, the learned Superintending Engineer has catalogued the contentions of the appellants, and then from page 7 to 9, he has catalogued the contentions of the cultivators of Chak No.7 MSR, and then, in one paragraph, has given the finding, that the Executive Engineer did not inform the Irrigation Minister, which was necessary, the Executive Engineer has passed the order without hearing all affected persons, the directions given earlier have not been complied with, technical aspects have not been looked into, and order has been passed, and more so because the cultivators situated at the tail end of both the Chaks are objecting to the shifting. With these conclusions, the

learned Superintending Engineer has simply set aside the order of the Executive Engineer.

In my view, apart from the fact that this is wholly a casual approach on the part of the Superintending Engineer, inasmuch as, the Superintending Engineer was the appellate authority, who was to decide the matter finally, and appropriately. If he found that the Executive Engineer had not enquired into the matter completely, as was required to be done, in that event, the matter was required to be remanded back again. It may also be noticed that if the Executive Engineer has not complied with the directions given earlier when the matter was remanded, he could have issued necessary direction for initiation of appropriate departmental proceedings against the faltering engineer, but then, could not rest contented, by simply setting aside the order of the Executive Engineer on this ground. The other aspect of the matter is, that if the decision made by the Executive Engineer was not satisfactory, i.e. upto the satisfaction of the Superintending Engineer, but then if the material were there on record, then the Superintending Engineer was required to himself look into the matter, and to have given decision, on the merits of the matter, but in either case, the approach of the Superintending Engineer, as appearing from Annex.7, cannot be sustained.

Consequently, the writ petition is allowed. The

order Annex.7 is set aside, and the matter is sent back to the Superintending Engineer, to decide the matter afresh in accordance with law, keeping in view the observations made above, and expeditiously. However, till then the status quo as it exists today, shall be maintained. The parties are left to bear their own costs.

(N P GUPTA),J.

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